XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA. No. 307 सन् 2003

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANTS: (In Jail)	1. Lalsingh, S/o Baldevsingh Gond, aged about 27 years, Occupation – Cultivation, R/o Village Khodari, Police Station Jaithari, Tehsil – Anuppur, District Shadole (M.P.) 2. Dhansingh, S/o Ahibaran Singh Gonh, aged about 45 years, Occupation Mazooduri. 3. Chhotelal, S/o Thakur Ram Gonh, aged about 50 years, Occupation Cultivation. 4. Bhavan Singh, S/o Ganesh Singh Gonh, aged about 20 years, Occupation Mazdoori. 5. Sevasingh, S/o Dhaniram Gonh, aged about 24 years, Occupation Mazdoori. Appellants no.2 to 5 all of them resident of Village Pakaria, Police Station Gaurella, Tehsil Pendra Road, District – Bilaspur (C.G.)
		- Versus -
	RESPONDENT:	State of Chhattisgarh, Through Police Station House Officer, Police Station – Gaurella, Tehsil Pendra Road, District Bilaspur (C.G.)
	(Appeal under Section 374 (2) of the Code of Criminal Procedure)	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(36)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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Division Bench: - Hon'ble Shri L.C. Bhadoo & Hon'ble Shri Dhirendra Mishra, JJ.

9-5-2007:-

Shri Malay Kumar Bhaduri, counsel for the appellants.

Shri D.K. Gwalre, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

1. This appeal is directed against judgment of conviction and order of sentence dated 29th August, 2002 passed by the 4th Additional Sessions Judge, Bilaspur in S.T. No.396/2000 whereby learned Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Sections 147, 148 and 302 read with Section 149 of the I.P.C., sentenced each of the accused to undergo R.I. for 1 year & to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 3 months under Section 147 of the I.P.C.; to undergo R.I. for 2 years & to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 6 months under Section 148 of the I.P.C. and to undergo imprisonment for life & to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 6 months under Section 302 read with Section 149 of the I.P.C.

2. Case of the prosecution, in brief, as set out in para-6 of the judgment of the trial Court, is that deceased Devlal used to doubt illicit relations of his wife with Amir Sai. In that connection, Panchayat was convened

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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in the village on 9-6-2000. The Panchayat got the matter compromised between Devlal and Amir Sai. Even then Devlal used to doubt fidelity of his wife. On 26-6-2000, when he returned to his house after finishing work in the field, he saw that his wife was hanging in his house. She committed suicide. After seeing the scene, he lost his temper, picked up a Tabbal, went to the house of Amir Sai. He was not at his residence. Shanti, wife of Amir Sai, was at the residence, therefore, he attacked her with Tabbal. Accused persons Bhavan Singh and Seva Singh persuaded Devlal not to indulge in Marpeet, on which Devlal attacked them with Tabbal and inflicted injuries. Accused Bhavan Singh, Seva Singh and their relations became angry. They brought lathis from their house and chased Devlal. He was caught in the field. There accused Lal Singh snatched Tabbal. He attacked Devlal with that Tabbal. On account of injuries inflicted by the accused persons Devlal succumbed to the injuries. The accused persons fled from the scene of occurrence.

3. Merg intimation Ex.-P/1 and first information report Ex.-P/2 were given by Shiv Prasad, father of the deceased, to the Police Station Gaurella. Site plan (Ex.-P/3) of the place of occurrence was prepared by Patwari. Site Plan Ex.-P/4 was prepared by the I.O. After giving notice to the Panchas, I.O. prepared inquest Ex.-P/11 on the body of deceased Devlal. Thereafter, based on documents, case for commission of offence under Sections 147, 148 and 302 read with Section 149 of the I.P.C. was registered under Ex.-P/21. The body of the deceased was sent for postmortem examination to the Government Hospital, Pendra Road, where Dr. R.K. Vyas (PW-15) conducted postmortem, prepared

(98)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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report Ex.-P/26 in which he opined that mode of death is coma and syncope caused by head injury and haemorrhage due to lever injury. It is homicidal in nature.

4. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Pendra Road, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case on transfer for trial.

5. The prosecution examined 15 witnesses at the trial in order to establish the charge against the accused persons. Statements of the accused persons were recorded under Section 313 Cr.P.C. in which they denied material appearing against them in the prosecution evidence. They stated that they are innocent and have been falsely implicated in the crime.

6. Learned Additional Sessions Judge after hearing learned counsel for the respective parties, placing reliance on the evidence of PW-5 Fagnu Singh, hostile witness, convicted and sentenced the accused/ appellants as aforementioned.

7. We have heard Shri Malay Kumar Bhaduri, learned counsel for the accused/appellants and Shri D.K. Gwalre, Additional Public Prosecutor for the State/respondent.

8. At the outset, learned counsel for the accused/appellants submitted that he is not disputing homicidal death of the deceased. Moreover,

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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~~PW-15 Dr. R.K. Vyas, who conducted postmortem, has stated~~ that death of Devlal was homicidal. In view of this evidence, it is established that death of Devlal was homicidal in nature.

9. As far as involvement of the accused/appellants in crime in question is concerned, in this case, almost all the eyewitnesses have turned hostile. Even PW-5 Fagnu Singh upon whose evidence the trial Court has convicted the accused/appellants is hostile witness. He has not supported the prosecution case in totality. In his evidence, he has admitted that he is servant of one Jagatram. He was informed by his owner Jagatram that few persons have committed murder of Devlal. Jagatram also informed him that Devlal was doubting illicit relations between his wife and Amir Sai. Therefore, Devlal went to attack Amir Sai. There he was murdered. Thereafter he was declared hostile. On cross-examination by A.G.P. this witness has stated that at about 2 p.m. there was commotion in the vicinity that Devlal deceased has attacked Shanti Bai, Bhavan Singh and Seva Singh with Tabbal. When he started attacking those persons, people of the vicinity became angry. The accused persons started running and they chased him. Devlal ran towards the threshing field of Bhavan Singh. But he did not see the accused persons. Thereafter he has stated that it is correct that the accused persons chased the deceased. They started attacking with lathis. He did not see accused Lal Singh snatching Tabbal from the deceased. He did not hear any cries of the deceased saying save save. It is correct that when they were attacking Devlal, he was frightened. He was standing at a distance. When Devlal stopped crying, the accused persons ran away after throwing lathis.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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The incident was seen by Mangal Singh, Ramjagat and Vaidhram. On cross-examination by counsel for the accused persons, he has stated that he returned at about 7 in the evening to his house after grazing cow. The place where he was grazing cow is far from the place of occurrence. He did not see the incident. It is correct that the deceased went to the house of Amir Sai to attack him, therefore, some dispute took place. He did not see any dispute between the accused persons and Devlal. When he returned after grazing cow, he heard that Seva Singh and Bhavan Singh have been taken to the hospital, he saw them on the way while they were being taken to the hospital.

10. The law on the point of placing reliance on the evidence of hostile witness is well settled. In the matter of **Balu Sonba Shinde V. State of Maharashtra** reported in **2002 SAR (Criminal) 753** the Apex Court held that:

> ".....declaration of a witness to be hostile does not *ipso facto* reject the evidence – and it is now well-settled that the portion of evidence being advantageous to the parties may be taken advantage of – but the Court before whom such reliance is placed shall have to be extremely cautious and circumspect in such acceptance."

11. In the matter of **State of U.P. V. Ramesh Prasad Misra and another** reported in **(1996) 10 SCC 360** the Apex Court held that "*it is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it*

(61)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted."

12. In the light of above judgments, if we scrutinize the evidence of PW-5 Fagnu Singh, in the first instance, he has totally denied about seeing the incident. Even on cross-examination by counsel for the accused, in para-8, he has stated that he returned from the field after grazing cow at about 7 p.m. in the evening whereas, incident took place at about 2.30 p.m. during the day. He has stated that the place where he was grazing cow was far from the place of the incident. Even on cross-examination by A.G.P., in the first instance, this witness has stated that he did not see the accused persons chasing the deceased. Thereafter, he has stated that it is correct that the accused persons chased the deceased and attacked him with lathis. He did not see Lal Singh snatching Tabbal from the deceased. Even if this portion is accepted as it is, it is difficult to convict the accused persons on this evidence for the reason that in the first instance, evidence of this witness is wavering, therefore, explicit reliance cannot be placed on the evidence of this witness. Moreover, except this evidence, there is no corroboration. Almost every witness has turned hostile. Evidence of this witness supporting the prosecution is that it is correct that the accused persons chased the deceased and attacked him with lathis. Even he has stated that he did not see Lal Singh snatching Tabbal from the deceased. As per the prosecution case, that happened at the time of the incident, therefore, this part of the evidence of this witness

62

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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cannot be accepted because it is not clear and cogent in respect of the assault made by the accused persons on the deceased.

13. There is no other evidence to connect the accused/appellants with crime in question.

14. For the foregoing reasons, conviction and sentences imposed upon the accused/appellants by the trial Court cannot be sustained as same is not based on legal and clinching evidence. The accused/appellants are entitled for benefit of doubt.

15. In the result, the appeal is allowed. Conviction and sentences imposed upon the accused/appellants under Sections 147, 148 and 302 read with Section 149 of the I.P.C. are set aside. They are acquitted of the said charges. It is stated that the accused persons are in detention since 5-7-2000. The accused/appellants be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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